MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 37 OF 1996

SAMPAT YELLAPPA GAWLI)
R/o Hut at Govandi)
Vakola Pipe Line,)
Santacruz, Hut No. 715,)
MUMBAI 400 054) .. APPELLANT
(Org.Accd.No.2)

Versus

THE STATE OF MAHARASHTRA
(ACB, GBU, CR. No.37/88) .. RESPONDENT

Ms. Shubhada Khot with A. Kuttikrishna,
Yogesh Jaybhay Suraj Hulka, Maheen Pradhan for appellant

Mrs. M. M. Deshmukh, APP for State

CORAM: **SMT. RANJANA DESAI, J.**

DATE: AUGUST 8, 2007.

ORAL JUDGMENT:

. The appellant (original accused 2 - "A-2" for convenience) along with one Surendra Ramchandra Karnalkar (original accused 1 - "A-1" for convenience) was tried in Special Case No. 80 of 1989 by the Special Judge at Greater Bombay for offences under Section 12 read with Section 7 of

the Prevention of Corruption Act, 1988 ("the said Act" for short) and Section 13(2) read with Section 13(1)(d) of the said Act and Section 109 of the Indian Penal Code ("I.P.C." for short). By judgment and order dated 18/11/95 the learned Special Judge convicted A-1 inter alia for offence punishable under Section 7 of the said Act and sentenced him to suffer R.I. for one year and to pay a fine of Rs.1000/-. In default of payment of fine he was to undergo further R.I. for one month. A-1 was also convicted under Section 13(2) of the said Act and was sentenced to suffer R.I. for one year and to pay a fine of Rs.1000/-; in default of payment of fine he was to undergo further R.I. for one month. The substantive sentences were ordered to run concurrently.

2. The present appellant i.e. A-2 is convicted for offence under Section 12 of the said Act and is sentenced to suffer R.I. for one year and to pay a fine of Rs.1000/-; in default of payment of fine he has to undergo further R.I. for one year. A-2 is also convicted for offence punishable under Section 13(2) of the said Act read with Section 109 of the I.P.C. and is sentenced to suffer R.I. for one year and to pay a fine of Rs.1000/-; in

default he has to undergo R.I. for one month.

3. Admittedly A-1 is dead. His appeal has been adjourned on the statement made by his counsel that he wants to seek instructions as to whether the appeal should be disposed of as having abated or it should be prosecuted at the request of his relatives. This court, therefore, is to only deal with the present appeal which is filed by A-2. It would be advantageous to give the gist of the case.

4. Admittedly A-1 and A-2 were the employees of the Bombay Municipal Corporation ("BMC" for short). At the relevant time i.e. on 4/10/88 A-1 was serving as Head Inspector Special in the Markets Division of the BMC. He had placed a requisition for providing a vehicle and the vehicle bearing No. MMU 6804 driven by A-2 was allotted to him.

5. A-1 joined the Municipal Service in the year 1958. He retired on 1/3/89 on superannuation. Till the end of July, 1986 he served as Head Inspector Special, Western Suburb area. On 1/8/86 he took the charge of the Eastern Suburb area and he continued in that position till 11th July, 1987. Thereafter he was transferred and posted to S & T

Ward. He continued to serve there till 29/6/88 and on 30/6/88 he took charge of the post of Head Inspector Special, Eastern Suburb area.

6. PW 2 Moinuddin Qureshi sells meat and he has a shop at Chamda Bazar locality in Dharavi. According to the prosecution PW 2 is not having licence to conduct the business. Several persons used to sell meat without licence by paying hafta to the line duty staff.

7. According to the prosecution after A-1 took charge of the post of Head Inspector Special on 30/6/88, the quantum of the hafta increased. PW 2 Moinuddin Qureshi was called to the office of the line duty staff in the Customs House at Mahim Causeway for the first time in July, 1988. A-1 then demanded Rs.1000/- per month as hafta from him. A-1 directed PW 2 Qureshi to see him with the said amount. Accordingly in the last week of July, 1988 and in the last week of August, 1988 PW 2 Qureshi went to the house of A-1 and paid him Rs.1000/- as bribe on each visit.

8. On 27/9/88, PW 2 Qureshi had gone to Deonar market for purchasing goats. A-1 met him there and

enquired with him about the hafta for the month of September, 1988. PW 2 pleaded for some time. A-1 then told him to see him with the demanded amount of Rs.1000/- at Deonar market on Tuesday i.e. on 4/10/88 after 6 p.m. when he would be visiting the said market as usual. According to the prosecution PW 2 Qureshi visited the ACB Office of Greater Bombay Unit on 4/10/88 at about 2 p.m. and lodged his complaint which is Exh.-28. ACP Gaikwad who was on duty recorded his complaint. On the basis of this complaint investigation was started.

9. ACP Gaikwad arranged for panchas. Pre trap panchnama was drawn. It is at Exh.-31. Pre trap panchnama records the usual formalities which were complied with. It indicates that the Complainant was introduced to the panchas. Demonstration regarding use and effect of the anthracene powder, retaining of the 10 GC notes of Rs.100/- denomination each from the cash amount of Rs.1095/- produced by the Complainant, mentioning of their numbers in the panchnama etc. was done. The GC notes were treated with anthracene powder. The police constable who had treated those notes was asked to go away after he folded the notes into a wad and placed it into the left side chest pocket

of the shirt worn by PW 2 Qureshi. The Complainant was instructed to take pancha witness PW 3 Gadekar along with him and to introduce him to A-1 suitably so that he would be in a position to witness the transaction and hear the conversation. The Complainant was instructed to give the signal to the raiding party after the acceptance of bribe. Members of the raiding party were to remain in the vicinity of the Deonar Abattoir where the transaction was likely to take place. The pre trap panchnama was concluded at 4-45 p.m.

10. After pre trap panchnama was concluded, ACP Gaikwad, the raiding party and the Complainant boarded the police van and proceeded to Deonar Abattoir. When the van reached Govandi bridge it stopped. By then it was 6 p.m. Complainant and the pancha witness PW 3 Gadekar got down from the van and proceeded ahead on foot towards Deonar Abattoir. ACP Gaikwad and other members of the raiding party followed them at a safe distance. Complainant Qureshi and PW 3 Gadekar reached the office of A-1. They stood near the canteen to the South of the Office of A-1. At about 6-30 p.m. or so the motor tempo MMU-6804 came there and halted in the open space. A-2 was driving the said

vehicle. After the vehicle was parked, A-2 got down from the said vehicle and stood near the railing. A-1 was sitting in the said tempo on a seat at the rear of the tempo. The Complainant and the pancha witnesses went towards the tempo and had a talk with A-1. Conversation took place between the Complainant and A-1, when A-1 is said to have demanded money. After the conversation A-1 called A-2 by his name. A-2 approached A-1. A-1 then gave signal to A-2 by turning his neck meaning thereby that he should go with the Complainant. Complainant Qureshi, A-2 and Pancha witness PW 3 Gadekar then went behind the motor tempo. Complainant then took out a wad of currency notes treated with anthracene powder by his right hand from his left side chest pocket of bush shirt worn by him and extended his right hand towards A-2 who accepted the said wad by his right hand.

11. According to the prosecution A-2 counted the marked currency notes with his both hands and thereafter kept the wad in the left side chest pocket of his bush shirt. A-2 is said to have asked the Complainant as to what about his money and the Complainant is said to have told him that the demand is paid in its entirety. The

Complainant thereafter gave the signal as told by the investigating officer. Two constables then rushed towards A-2 and detained him. ACP Gaikwad then disclosed his identity to both the accused. The hands of A-2 were examined under the UV rays when the bluish glow was seen on the fingures and palm of his hands. Bluish glow was also seen on the mouth portion and inner portion of the left side chest pocket of the shirt of A-2. Bluish glow was seen on the wad of currency notes. After carrying out the necessary formalities, the post trap panchnama was drawn. All the articles were seized. The post trap panchnama concluded at 10-15 p.m. Statements of witnesses were then recorded. After completing the necessary formalities and after obtaining the sanction to prosecute the accused, the accused came to be charged as aforesaid.

12. In support of its case, the prosecution examined as many as six witnesses, The prosecution examined PW 1 Tinaikar who was at the relevant time the Municipal Commissioner of Bombay Municipal Corporation on the point of sanction to prosecute the accused. The prosecution examined PW 2 the Complainant. PW 3 Mahesh Ramchandra Gadekar pancha

witness, PW 4 Shantilal Lalji Soni, PW 5 Hari Lilaram Gangwani and PW 6 Arvind Rangnath Gaikwad, Investigating Officer.

13. Defence of A-1 was that he was falsely involved. According to him he did not know PW 2 Qureshi. He did not know that Qureshi had any shop in which he sold meat. He claimed that Dharavi was not within his jurisdiction. He stated that since Dharavi was not within his jurisdiction there was no question of his accepting any bribe from Qureshi. He admitted that PW 2 Qureshi met him when he was sitting in his van but according to him there was no one with Qureshi. According to him Qureshi met him under the guise of giving him some secret information relating to illegal slaughtering of animals and he told him that the complaint was from Deonar area and, therefore, he should go and meet the officer who was concerned with that area. According to him he does not know what happened thereafter. He claimed that pancha witness PW 3 Gadekar has deposed against him at the instance of PW 6 ACP Gaikwad because he had taken action against people who had indulged in illegal activities.

14. A-2 claimed to be innocent. He admitted that on the day of the trap he was driving tempo bearing No. MMU 6804. He claimed that he did not know PW 2 Qureshi. He had no knowledge that A-1 quoted any amount by way of hafta from Qureshi. He claimed that on the day of the trap when he was standing behind the tempo, PW 2 Qureshi had alone come there. Panch witness PW 3 Gadekar was not there. As regards the alleged payment of bribe money A-2 claimed that PW 2 Qureshi attempted to plant bribe money in his shirt pocket. According to him when he took out the wad in his hand to ward off planting of money he was caught by the police.

15. After perusing the evidence on record, the learned Judge was of the opinion that the prosecution had proved its case beyond reasonable doubt. He, therefore, convicted the accused as aforesaid. A-2 challenges the said judgment and order in this appeal.

16. I have heard at some length Ms. Khot, the learned counsel appearing for the appellant and the learned APP Mrs. Deshmukh for the State. With the help of the learned counsel I have gone through the evidence and record of the case.

17. Ms. Khot has assailed the case of the prosecution that A-2 had committed and abetted the offence committed by A-1. She submitted that A-2 was only driving the vehicle. The prosecution has not adduced any evidence which can establish that A-2 had any knowledge that A-1 was to accept bribe from PW 2 Qureshi. There is no evidence on record to suggest that A-2 was to receive any benefit out of the said acceptance of bribe by A-1. There is nothing to indicate that A-2 had a share in it. The learned counsel urged that the offence of abetment would be complete only if intention to abet the offence is present and for that knowledge that the offence is likely to be committed must be there. She submitted that knowledge and intention are completely absent in the instant case. She submitted that admittedly A-2 has not made any demand for money. The alleged conversation between A-2 and the Complainant is also not borne out by the evidence on record. There are serious discrepancies in the prosecution evidence. In any case what the evidence on record at best would suggest is that A-2 accepted some amount on the order or direction of his superior without knowing the background or without knowing that it was bribe

money. The learned counsel urged that mere recovery of alleged bribe money from the possession of A-2 cannot give rise to the presumption under Section 20 of the the said Act.

18. In this connection the learned counsel relied on the judgment of the Supreme Court in **Trilok Chand Jain v. State of Delhi, 1977, Cri. L.J. 254**. She also relied on the judgment of this court in **Pandharinath Shelke v. State of Maharashtra, 2005 (2) B.C.R. (Cri.) 940**. Reliance was also placed on judgment of the Madhya Pradesh High Court in **Suresh Kumar Shrivastava v. State of M. P. 1994 Cri. L.J. 3738**. Yet another judgment of Madhya Pradesh High Court in **Ram Swaroop Rathore v. State of M.P., 2000 Cri. L. J. 1882** was also relied upon. The learned counsel submitted that in the circumstances the impugned judgment and order be set aside.

19. The learned APP on the other hand strenuously contended that the prosecution has proved its case beyond reasonable doubt. The evidence of the prosecution witnesses is consistent and cogent. A-2 was arrested red handed. Money was recovered from him. Post trap panchnama clearly establishes

the recovery of money from A-2. A-2 was admittedly driving the vehicle of A-1. The evidence indicates that A-2 was consistently accepting bribe and A-2 was his driver for a long time and, therefore, in the circumstances of the case, the prosecution story that A-2 accepted the bribe amount at the instance of A-1 with full knowledge that it was bribe amount cannot be lightly discarded. The learned APP therefore, urged that the order of conviction and sentence be confirmed.

20. That A-1 and A-2 were at the relevant time public servants is not disputed before me. In the facts of this case it is not necessary to express any final opinion about the truthfulness or otherwise of the prosecution story against A-1. I will therefore, examine the case of A-2 on the assumption that the prosecution story against A-1 is correct and truthful.

21. The charge against A-2 is that being a public servant on 4/10/88 he aided and abetted A-1 a public servant in attempting to obtain and in obtaining and accepting the sum of Rs.1000/-for and on behalf of A-1 from Shri Qureshi of Bombay as gratification other than the legal remuneration as

a motive or a reward for doing or for forbearing to do official acts or for showing favour or forbearing to show disfavour in the exercise of his official functions to the said Shri Qureshi in the matter of allowing him to conduct a mutton shop at Dharavi, Bombay without a valid municipal licence and thereby he has committed an offence punishable under Section 12 read with Section 7 of the said Act. A-2 is further charged that being a public servant on 4/10/88, he aided and abetted A-1 a public servant in obtaining pecuniary advantage i.e. a sum of Rs.1000/- for and on behalf of A-1 from Shri Qureshi by corrupt or illegal means or by otherwise abusing the position of A-1 as such public servant and thereby committed an offence punishable under Section 13 (2) read with Section 13(1) (d) of the said Act and Section 109 of the I.P.C. Section 7 of the said Act provides for offence of taking gratification other than legal remuneration in respect of an official act by a public servant. Section 12 of the said Act provides for punishment of the abetment of offence defined under Section 7 or Section 11 of the said Act. Section 13 (2) of the said Act provides for punishment for a public servant who commits criminal misconduct. Section 13(1) (b) states what

is a criminal misconduct by a public servant. A public servant can be said to have committed criminal misconduct inter alia if he by corrupt or illegal means obtains for himself or for any other person any valuable thing or pecuniary advantage or he abuses his position as a public servant, obtains for himself or for any other person any valuable thing or any pecuniary advantage or he while holding office as a public servant obtains for any person any valuable thing or pecuniary advantage without any public interest. Section 109 of the I.P.C. provides for punishment for the offence of abetment, if the act abetted is committed in consequence of abetment, and no express provision is made under the I.P.C. for punishment of such abetment.

22. The Complainant's case is that he was having his shop in Dharavi in which he used to sell meat. According to him he did not have a licence for the said shop. His case is that A-1 used to collect bribe from persons who were selling meat without licence and allow them to indulge in selling meat without licence. A-1 after taking charge of post of Head Inspector Special demanded bribe from PW 2 Qureshi for the month of September, 1988 which PW 2

had not paid. PW 2 thereafter visited the office of ACB on 4/10/88 and lodged the complaint. By reason of this complaint, a trap was laid and the accused were trapped. Assuming that the prosecution story that A-1 was incharge of the Dharavi area where PW-2's shop was situated and by accepting bribe he was allowing people like PW 2 to continue their business without licence and that on 4/10/88 A-1 made a demand of Rs.1000/- from PW 2, is true it is clear that it was A-1 who was the public servant in authority and it is the prosecution case that he made a demand. The charges which I have quoted hereinabove state that A-2 had abetted the offence committed by A-1. If charge of abetment is to be proved it is necessary for the prosecution to establish that A-2 had knowledge that A-1 was collecting bribe and he had intention to abet that offence by collecting the bribe amount on his behalf. Even if it is assumed that A-1 by corrupt and illegal means abused his position as a public servant by allowing PW 2 to carry on his business without licence and for that obtained Rs.1000/- as bribe, it will have to be seen whether in this act A-2 participated with knowledge. It will have to be examined whether even if the recovery of money from A-2 is proved on

that basis he could be convicted for abetment. The effect of presumption under Section 20 of the said Act will also have to be examined.

23. In this connection it is necessary to refer to the judgment of the Supreme Court in **Trilok Chand's case (supra)**. In that case the Complainant was a manufacturer of rubber parts. On his application, a power connection was sanctioned for his factory. Though he had deposited money no steps were taken by the employees of the Electric Supply Undertaking to install the poles and give connection. One S P Gupta, Inspector of the undertaking approached him and demanded a bribe of Rs.125/- in consideration of giving connection. The Complainant had no intention to pay the bribe and, therefore, he lodged a complaint with Anti-Corruption Police. His statement came to be recorded. A trap was led for entrapping Gupta. The police party reached the factory of the Complainant on 20th June that being the appointed day. However, the Complainant received a message from Gupta through a lineman that instead of the 20th he would be coming on the following day. On the next day i.e. on 21st of June, 1968, Gupta came to the factory and started installation work. Gupta informed the Complainant

that he would return to the factory either personally or send somebody else to collect the amount of Rs.100/- at about 2 p.m. The Complainant passed on this information to the D.S.P. The D.S.P. along with raiding party came to the Complainant at about 11-30 a.m. and settled the details of the trap. Gupta however, did not turn up. Instead a permanent labourer working under Gupta came to the factory and told the Complainant that he had been sent by Gupta and that the money be given to him. Thereupon the Complainant handed over the currency notes to him. On receiving the agreed signal, the D.S.P. and the raiding party rushed in and arrested the said person.

24. The appellant was charged under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 and under Section 161 of the I.P.C. The courts below convicted the appellant and an appeal was carried to the Supreme Court. The Supreme Court considered the effect of Section 4(1) of the Prevention of Corruption Act 1947 which is in paramateria with Section 20 of the said Act. The Supreme Court observed that the presumption provided in Section 5(1) read with Subsection (2) thereof is rebuttable presumption and not an

absolute presumption. If the prosecution proves that the accused has accepted or obtained gratification other than legal remuneration, the court has to presume that the gratification was accepted or obtained by the accused as a motive or reward . The presumption, however, being rebuttable, the accused can prove to the contrary. The proof may partake the shape of defence evidence led by the accused or it may consist of circumstances appearing in the prosecution evidence itself as a result of cross-examination or otherwise. The Supreme Court clarified that the degree and character of the burden of proof which Section 4(1) casts on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which rests on the prosecution. The Supreme Court observed that the accused may rebut the presumption by showing a mere preponderance of probability in his favour. It is not for him to establish his case beyond a reasonable doubt. The Supreme Court also clarified that if the story set up by the prosecution inherently militates against or is inconsistent with the fact presumed, the presumption will be rendered sterile from its very inception, if out of judicial courtesy it cannot be

rejected out of hand as still-born. On facts it was argued before the Supreme Court that the appellant therein had the necessary intention because his conduct suggested that. It was pointed out that the appellant had visited the site and had checked the labourers working there and this conduct suggests that he had knowledge. The Supreme Court observed that this conduct does not suggest that he had received the GC notes with the requisite mensrea. Evidently in collecting the currency notes from the Complainant he was only acting as an innocent tool of Gupta. He was not concerned in his official capacity with the installation work. The Supreme Court made it clear that the gratification must have been received by the accused as a motive or reward for committing an act or omission in connection with his official function. It must be shown that there was an understanding that the bribe was given in consideration of some official act or conduct. There must be incriminating motive behind the action. The Supreme Court set aside the conviction of the appellant holding that the appellant was a mere labourer who was not concerned with the installation work and there was nothing to show that he had demanded the money on his own account

to get any favour or service done to the complainant.

25. It is not necessary for me to deal with the other judgments on which reliance is placed by Ms. Khot the learned counsel for the appellant because this court and the Madhya Pradesh High Court have reiterated the same principles. The present case will have to be examined in the light of the above principles laid down by the Supreme Court.

26. It is not necessary to refer to the evidence of PW 1 Mr. Tinaikar as his evidence is centered round the question of sanction and the sanction has not been seriously challenged before me. So far as PW 2 Qureshi is concerned, admittedly Qureshi is running a mutton shop illegally without the licence. He has admitted that on earlier two occasions he had given bribe to A-1. His evidence, therefore, is in the nature of evidence of an approver and would, therefore, certainly need corroboration. Such evidence in the nature of things cannot be accepted at its face value. Therefore, it will have to be seen whether sufficient corroboration is available to his evidence from the other evidence on record. PW 2

has in his evidence stated that on the day of incident he went along with the raiding party towards the tempo in which A-1 was sitting. A-2 was standing near the said tempo. There was some conversation between A-1 and him. According to him after he told A-1 that he had brought the money A-1 gave a hint to A-2 by moving his right hand. Thereafter A-2 came and took them to the rear of the vehicle. PW 2 took out the money from his pocket by inserting his right hand in the left side chest pocket and handed over that amount to A-2. According to him he paid the money to the driver because A-1 had asked him to handover that amount to A-2. He has stated that A-2 accepted this amount in his right hand, counted the notes by both the hands and kept that amount in the left side chest pocket of his shirt. He has further stated that he introduced pancha witness Gadekar to A-1. After A-2 accepted the money A-2 questioned him as to what about his money and he told A-2 that his money is included in the amount given to A-2.

27. It is pertinent to note that whereas he claims in the court that A-2 had asked him about his money, this assertion is found missing in his police statement and that has been brought on

record. It is clear, therefore, that this witness is prone to exaggeration. If, A-2 had really asked this witness about his share or his money that would have undoubtedly established his knowledge about A-1's plan to take bribe and his intention to participate in it or abet it. This omission, in my opinion makes a dent in the prosecution case.

28. It is pertinent to note that in his evidence PW 2 has stated that sometimes A-1 used to send his subordinate to collect bribe and sometime he used to send his driver but this is also not stated by him in his complaint. A-2 is a driver of A-1. Nothing has come in the evidence to suggest that he was continuously in the service of A-1 and when A-1 was collecting bribe from people he all along participated in that activity. Therefore, even if it is accepted that through his driver A-1 used to collect money, there is no evidence on record that it is A-2 who used to collect money for A-1. The evidence of this witness, therefore, may at the most establish that A-2 accepted the money but there is nothing to establish that he accepted it with knowledge and intention to abet the offence of taking bribe. Possibility of a superior officer directing his subordinate employee to do or carry

out an act and the subordinate employee carrying out the direction cannot be ruled out.

29. PW 3 is Mahesh Gadekar. He is the panch witness. He has also stated that A-1 gave a hint to A-2, A-2 came near the site of the tempo. He and the Complainant went towards the rear side. Complainant then took out the money from his pocket by his right hand and handed over the said amount to A-2, who took that amount in his hand, counted it and kept it in his left side chest pocket.

30. It is pertinent to note that this witness does not say a word about the alleged demand made by A-2 to the Complainant. This, in my opinion, gives a further blow to the prosecution story. If A-2 had demanded the money, the panch witness who had heard the conversation between A-1 and the Complainant could never have failed to reproduce the conversation which the Complainant allegedly had with A-2. There is, therefore, no corroboration to PW 2’s evidence indicating that A-2 asked for money. I am therefore, of the opinion that PW 2’s evidence so far as it involves A-2 cannot be accepted. At any rate he has tried to exaggerate his case against A-2.

31. It is also pertinent to note that PW 2 in his cross-examination has stated that when he paid the money there was no talk between him and A-2 and he has also stated that he had not met A-2 on any occasion prior to that day and that he had seen A-2 for the first time in his life when he got down from the driver's seat. This admission of PW 2 makes it clear that if there were earlier instances of A-1 taking bribe through a driver from the complainant it was not through A-2 that money was taken because in that case the Complainant would have stated that he had seen A-2 earlier. It is also pertinent to note that PW 2 has stated that on two earlier occasions he had paid money to A-1. His assertion that he had seen A-2 for the first time completely demolishes the prosecution case that A-2 had earlier also accepted money on behalf of A-1.

32. In the ultimate analysis, therefore, I am of the opinion that the prosecution has failed to prove it's case against A-2 beyond reasonable doubt. Even if it is held that A-2 had collected money from PW 2, it is possible as stated by the Supreme Court in **Trilok Chand**'s **case (supra)** that

he was only acting as an innocent tool of A-1. He did not accept the money in his official capacity as a motive or reward for committing an act or omission in connection with his official function. There is no evidence to establish that there was an incriminating motive behind the action or that there was an understanding that the bribe was given in consideration of some official act or conduct. It is not possible to hold that A-2 abetted the offence committed by A-1. Consequently it is not possible to hold that A-2 is guilty of criminal misconduct. The prosecution story so far as it concerns A-2, is not clear. It is shrouded in suspicion. A-2 must, therefore, get benefit of doubt. Hence the following order:

. "The impugned judgment and order dated 18/11/95 passed by the Special Judge Greater Bombay in Special Case No. 80 of 1989 is quashed and set aside to the extent it convicts and sentences A-2 Sampat Yellappa Gawli. He is acquitted of the offence with which he was charged. A-2 Sampat Yellappa Gawli is on bail. His bail bond stands cancelled.

. Appeal is disposed of".

. Office to provide authenticated copy of this order.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 37 OF 1996

SAMPAT YELLAPPA GAWLI .. APPELLANT (Org.Accd.No.2)

Versus

THE STATE OF MAHARASHTRA .. RESPONDENT

Ms. Shubhada Khot with A. Kuttikrishna, Yogesh Jaybhay Suraj Hulka, Maheen Pradhan for appellant

Mrs. M. M. Deshmukh, APP for State

CORAM: **SMT. RANJANA DESAI, J.**

DATE: AUGUST 8, 2007.

OPERATIVE PART OF THE ORDER:

. For the reasons separately in the Oral Judgment, this court has passed the following order:

. "The impugned judgment and order dated 18/11/95 passed by the Special Judge Greater Bombay in Special Case No. 80 of 1989 is quashed and set aside to the extent it convicts and sentences A-2 Sampat Yellappa Gawli. He is acquitted of the offence with which he was charged. A-2 Sampat Yellappa Gawli is on bail. His bail bond stands cancelled.

Appeal is disposed of".

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 37 OF 1996

DATE OF DECISION:8/8/2007

Submitted for
approval.

THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON'BLE SHRI JUSTICE :

1. Whether Reporters of Local Papers be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices?

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1988 OF 2006

DATE ON WHICH THE JUDGMENT IS RESERVED : 14TH JUNE, 2007

DATE ON WHICH THE JUDGMENT IS PRONOUNCED:_____TH JULY,2007

Transcription of Judgment / Order.

Submitted for approval.

THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON'BLE SHRI JUSTICE : D. B. BHOSALE:

1. Whether Reporters of Local Papers be allowed to see the Judgment?)

2. To be referred to the Reporters or not?)

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5. Whether it is to be circulated to the Civil Judges?)

6. Whether the case involves an impor-)
tant question of law and whether)
a copy of the judgment should be)
sent to Nagpur, Aurangabad and Goa)
Offices?)